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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

ILLINOIS
COMMERCE COMMISSION

HUNTINGTON PARK APARTMENTS,)

Complainant)

v.)

COMMONWEALTH EDISON)
COMPANY,)

Respondent.)

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Docket No. 02-0001

INITIAL BRIEF OF
COMMONWEALTH EDISON COMPANY

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Dated: July 11, 2003

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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COMMONWEALTH EDISON COMPANY'S INITIAL BRIEF

INTRODUCTION AND SUMMARY

Huntington Park Apartments, (hereinafter, "Complainant") has, since June 1998, operated an apartment complex in Aurora, Illinois, which includes 240 residential apartments. Complainant owes Commonwealth Edison Company ("ComEd") \$85,848 for past electrical usage in the common areas of the 11 buildings in the apartment complex. Over the past few years, Complainant has, at various times, agreed that certain charges about which it now complains were due and owing. Complainant has also asserted numerous vague and wholly unsubstantiated "claims" that it has somehow been overcharged by ComEd.

As described below, at the evidentiary hearing in this matter, Complainant's claims have finally been exposed for what they really are, the speculative assertions of its only witness who admittedly performed or commissioned no analysis as to why the charges are too high. The Commission should deny Complainant's claims and order it to immediately pay ComEd the \$85,848 that it is rightly owed.

Because the record has been marked "heard and taken," in the interests of administrative economy, ComEd believes that there is no reason to continue to pursue its motions for a directed verdict and to strike Complainant's Ex. 2 from the record. ComEd hereby withdraws both motions. This in no way constitutes a concession by ComEd that Complainant has met its burden of proof to establish a prima facie case in this matter -- it has not, or a concession that Complainant's Exhibit 2 was properly admitted into evidence. ComEd would rather limit the possible issues on appeal and have the case decided now on the basis of all of the facts in the record.

ARGUMENT

I. COMED PROPERLY BILLED COMPLAINANT FOR COMMON AREA ELECTRICAL USAGE.

A. The Common Areas

Complainant owns an apartment complex in Aurora, Illinois, consisting of 240 residential apartments housed in 11 buildings. (Tr. p 116) During the relevant period of this case, the service address for this apartment complex has been 1281 North Nantucket, Aurora, Illinois (the "Service Address"). (Tr. pp 284-286) During the entire period at issue, ComEd has provided electrical service to the common areas in these 11 buildings, (the "Common Areas") through its General Service Rate 6 in accordance with the tariff sheets approved by the Illinois Commerce Commission ("ICC"). (ComEd Ex. 3.0 p 3) In the last five years, ComEd has billed for electrical usage in the Common Areas under a single commercial account number, although, as explained below, the name on the account and the actual account number changed for various reasons. (ComEd Ex. 3.0 p 5)

B. Complainant Admits That It Alone Is Responsible For All Electrical Usage At Issue

Mr. Hughes, on behalf of Complainant, admitted at the hearing that Complainant is responsible for paying for all electrical usage in the common areas from June 1998 to the present, which covers the entire period of Complainant's "dispute". (Tr. p 155) This is significant because ComEd is now entitled to recover \$9,140 in charges that, up until now, it believed were owed by a third party. (ComEd Ex. 4)

C. Complainant Owes ComEd \$76,916¹

Between June 10, 1998, and January 13, 1999, Complaint accumulated energy charges and late fees for usage in the common areas in the amount of \$19,684. (ComEd Ex. 4, ComEd Cross Ex. 1) Complainant paid \$10,543 toward this usage, but never paid for any usage for the three-month period between October 10, 1998, and January 13, 1999. (Tr. 151, ComEd Ex. 4) Complainant filed no complaint with the Commission disputing any of these charges until the direct testimony of Dennis Hughes was filed four years later in 2003. ComEd has been underpaid by \$9,140 for this period. (ComEd Ex. 4)

Between December 1999 and May 12, 2003, Complainant incurred energy charges in the cumulative amount of \$94,810. (ComEd Ex. 8; ComEd Ex. 7) Over that same time period, late charges amounted to \$17,554, for a total of \$112,364. (ComEd Ex. 2.0, p. 11; ComEd Ex. 7 p. 3) For that period, Complainant has made payments in the amount of \$44,588, leaving an unpaid balance of \$67,776. Therefore, the total amount that Complainant owes ComEd for service and late fees between October 1998 and May 12, 2003, is \$76,916. The charges are summarized in the following table:

<u>Time Period</u>	<u>Energy Charges</u>	<u>Late Fees</u>	<u>Payments</u>	<u>Amount Due</u>
October 1998 – January 1999	\$ 8,700	\$ 440	0	\$ 9,140
December 1999 – May 2003	\$ 94,810	\$16,255	\$44,588	\$66,477
Total	\$103,510	\$16,695	\$44,588	\$75,617

D. The Accounts in Other Parties' Names

Mid-American Management, Account No. 8087754003

Mr. Hughes' management of the apartment complex began in July 1998. (Compl Ex. 1 p 1) At that time, the name on the ComEd account for the Common Areas was Mid-American Management Company. (Tr. p 288) ComEd had issued a bill to Mid-American for the period June 10, 1998 through October 9, 1998 in the amount of \$10,543. (ComEd Cross Ex. 1) Mr. Hughes contacted ComEd in December 1998, and entered into a payment plan on behalf of Complainant to pay the \$10,543 in two installments of \$5,000 and \$5,543, respectively. (Tr. pp 145-146) Those amounts were paid by mid-January 1999. However, between October 10, 1998, and January 14, 1999, Complainant had racked up another \$8,700 in electricity charges alone for the Common Areas. (Tr. p 361) These bills were sent to "Mid-American Management, Huntington Park Apartments" to Complainant's post office box: P.O. Box 275, Prospect Heights, Illinois. (ComEd Ex. 2.6; ComEd Cross Ex. 1) Mr. Hughes produced these bills in this

¹ Because it was clear that Complainant had significantly underpaid ComEd, the Administrative Law judge at the close of the hearing ordered Complainant to pay ComEd \$35,000 over three months. Complainant has made the first installment payment of \$12,000. The above amount includes credit for this first payment.

litigation. (ComEd Cross Ex. 1) Despite collection efforts, this amount was never paid to ComEd, to this day. (ComEd Ex. 4)

A month after Complainant's December 1998 agreement to pay, ComEd was contacted and asked to change the name on the Common Areas account to Huntington Park Apartments. (Tr. pp 362-363) ComEd began issuing bills in the name of Huntington Park Apartments by February 16, 1999. (Tr. p 363; ComEd Cross Ex. 3) ComEd did not transfer the prior balance of \$8,700 to Complainant because it then believed that Mid-American, not Complainant, was responsible for this balance. (Tr. pp 363-364) Mr. Hughes first admitted that Complainant was responsible for this past due balance four years later, at the first day of the hearing in this matter. (Tr. p 227; Tr. p 155)

Aspen Square Management, Inc., Account No. 8087754021

The Common Areas account remained in Complainant's name from January 14, 1999, through June 1999 (ComEd Cross Ex. 3; ComEd Cross Ex. 7) ComEd sent the bills to the Service Address during this period. (Com Ed Cross Ex. 7; ComEd Cross Ex. 3.0) ComEd later learned that in November 1999 Aspen Square Management, Inc. ("Aspen") had acquired certain Huntington Park apartments located in Elgin, Illinois. After the acquisition, Aspen had asked ComEd to send its Huntington Park apartment bills to its Massachusetts address. (ComEd Ex. 2.1) Through a clerical error in November, ComEd also initially sent bills for the Common Areas to Aspen for five months between November 1999 and March 2000. (ComEd Ex. 2.0, pp 3-4) Because this was a new entity, ComEd assigned a new commercial account number to Aspen for the Common Areas, Acct. no. 8087754021.

On April 24, 2000, Mr. Hughes contacted ComEd and advised that the Common Areas' account should be in Complainant's name. (ComEd Ex. 2.1) Mr. Dorgan determined that the

bills for November to March were mistakenly sent to Aspen. Mr. Dorgan re-issued the bills for this period to Complainant. (ComEd Ex. 2.0 p 4) Those bills, in the cumulative amount of \$24,192.81 were sent to Complainant's Service Address between May 17, 2000, and June 8, 2000. (ComEd Ex. 2.2; Tr. pp 284-286)

Huntington Park Apartments, Account No. 8087754030

Beginning in April 2000, ComEd placed the commercial account for the Common Areas in the name of Complainant. As is its practice, ComEd assigned a new account number for Complainant, acct. no. 8087754030. (ComEd Ex. 2.1)

E. Two Years' of Meter and Billing Data Demonstrate Consistent Usage and Accurate Charges

ComEd Consistently Read All 11 Meters

At all times in the last five years, 11 ComEd meters have measured the kilowatt hour ("kWh") usage and kilowatt demand ("kW") used in the common areas.² In accordance with Rate 6, ComEd billed the apartment complex for kilowatt hour usage charges and demand charges. (ComEd Ex. 3.0 p 4) Each meter measures each type of usage. The measurement of kilowatt hours is analogous to an odometer in a car. In other words, kWh would be similar to mileage measured by an odometer. Similarly, demand would be analogous to the speed or rate at which one traveled. (Tr. pp 348-349)

ComEd's bundled rates have been frozen during the relevant period, and it charged the Complainant \$11.13 per kW of demand during the non-summer months and \$14.24 per kW during the three summer months. (ComEd Rate 6 Ill. C. C. No. 4, 36th Rev. Sheet No. 24)

² Due to systematic periodic meter exchanges, the actual number of meters used during this 5-year period was 16, although only 11 were in place at any one time.

ComEd meter reader Mr. Childress testified that in the past four years, he read the 11 meters that measured usage in the Common Areas on a regular basis each month. (ComEd Ex. 1.0 p 3-4) This evidence is irrefuted. Complainant offered no evidence challenging the accuracy of Mr. Childress' meter reading.

Mr. Childress also testified that during the relevant time, the meters were generally located inside buildings at the property that were secured by a numeric combination lock, for which he had the combination. (Tr. p 266) Mr. Childress demonstrated at the hearing the procedure that he follows to "activate" or read the meters. First, he records the "found" demand reading which is a numeric value that appears on the electronic face of the meter and should be the exact same value as the "left" demand reading that appeared on the face of the meter when he left it the prior month. Next, he would break the plastic ComEd demand seal; pull the small lever in the center of the meter out; turn the lever clockwise a quarter turn; and depress the lever against a plunger labeled "reset". This activates the meter which then displays the highest kilowatt demand measured since the last activation and displays a "left" value which would then, if no activations occur until the next meter reading, would be the "found" value that he sees when he returns the following month. (Tr. pp 271-273) After he read each meter each month, Mr. Childress followed ComEd's standard operating procedure and placed a new plastic demand seal on the meter lever. (ComEd Ex. 1.0 p 4) Mr. Childress testified that in virtually every month that he read the subject meters, one or two of the ComEd demand seals would either be broken or missing. (ComEd Ex. 1.0 p 4)

At the hearing, Mr. Hughes, the first witness to testify, said that ComEd Cross Ex. 6 (an actual meter at the hearing, but admitted as a photograph) was similar to those commercial meters present at Complainant's property during the disputed period. (Tr. p 174) Mr. Hughes

demonstrated at the hearing how to activate the meter by breaking the plastic seal and pushing the lever marked “reset.” (Tr. pp 176-178) Mr. Hughes testified that he learned how to activate such meters when ComEd witness Mr. Dorgan showed him how to do so during a meeting at the Complainant premises. (Tr. pp 176-178) Mr. Dorgan, who was in the hearing room at the time of Mr. Hughes’ testimony, testified on the second day of the hearing that he had never met Mr. Hughes before the hearing. (Tr. p 294)

After being told that Mr. Dorgan testified that he had never met him, Mr. Hughes testified that a Jerry Dorgan imposter was the person who showed him how to activate a meter. (Tr. p 493-494)

On the first day of the hearing, Mr. Hughes testified that he had asked for a meter investigation at Complainant’s premises, and that he was not present on February 13, 2001, when the ComEd person showed up at Complainant’s premises to conduct the analysis. (Tr. p 170) On the third day of the hearing, Mr. Hughes was certain that he met with the Jerry Dorgan imposter on February 13, 2001, in connection with this meter investigation. (Tr. p 501-503)

Mr. Gary Pacholski, a Senior Analyst in ComEd’s Customer Relations Department, testified about the billing effect of multiple meter activations between meter readings, or “double punching”. Mr. Pacholski has 33 years of experience in meter reading, billing and customer service matters at ComEd. (ComEd Ex. 3.0 p 1) He testified that when ComEd’s billing system detects a double punch, “[t]he billing system automatically reduces the demand billed for that meter by half in order to give the customer the benefit of the doubt.” (ComEd Ex. 3.0 p 9) In that circumstance, even though the bill is based upon an actual meter reading, the automatic adjustment necessitates that the bill be identified as “estimated”. (Tr. pp 441-442)

F. 75 % of the Meter Data was Unaffected By “Double Punches”

Mr. Pacholski reviewed the demand charges billed to Complainant on all 11 meters over a twenty-two month period: April 1, 2000 through January 2002. (ComEd Ex. 8) The demand charge billed to Complainant for the Common Areas was calculated by adding the demand on each meter and multiplying it by the applicable rate. See, for example, the April 22, 2003 invoice to Complainant. (ComEd Ex. 6) In sum, Mr. Pacholski reviewed 242 independent demand readings over this twenty-two month period. (ComEd Ex. 8) A meter was present in each of the 11 locations during the twenty-two month period. Out of 242 meter readings, 75% or 183 represent actual readings unaffected by double punching.

G. The Data Identifies a Consistent Usage Pattern On Each of the 11 Meters That Repeats From Year to Year.

Mr. Pacholski reviewed the demand charges associated with each of the 11 meter locations over the twenty-six month period between December 8, 1999 (the earliest date for which reliable data was available), and January 8, 2002 (the last date in dispute). (ComEd Ex. 3.0 p 5 – 6) Mr. Pacholski prepared a chart for each meter depicting the demand billed by ComEd in each of the months. (ComEd Ex. 3.1-3.11) Mr. Pacholski also prepared a second document entitled “Huntington Park Apartments, Inc., Disputed Charges, Billing and Payment History, November 1999 – January 2002.” (ComEd Ex. 8)

As to 10 of the meters, Mr. Pacholski testified that he observed that demand charges fluctuated within a fairly narrow range and charges tended to fluctuate consistently in patterns given the seasons of the year and tended to be higher in the winter months. (ComEd Ex. 3.0 pp 6 – 7; Ex. 3.1-3.10) During the course of evaluating this data, Mr. Pacholski determined that demand charges on one meter appeared abnormally high in three billing periods based upon Complainant’s usage patterns. ComEd proposed an adjustment to the demand charges in those

months to render the charges consistent with historical readings on the meter. (ComEd Ex. 3.0 pp 7 – 8) This results in a proposed credit to Complainant in the amount of \$1,027. Id.

The higher demand charges observed by Mr. Pacholski during the winter months is consistent with the evidence that Complainant typically installed space heaters in the common areas during the winter months. (ComEd Ex. 2.0 p 15) Complainant offered no evidence that its usage of electricity in the Common Areas fluctuated in a way that was inconsistent with ComEd's meter data.

II. COMPLAINANT PRESENTED NO COMPETENT EVIDENCE THAT IT WAS IMPROPERLY CHARGED BY COMED.

A. Many of Complainant's "Claims" Are Time-Barred By The Public Utilities Act

Complainant filed its formal complaint with the Commission January 2, 2002. By that date, any claims relating to electric service provided prior to January 2, 2000 were time-barred under the Public Utilities Act (the "Act"). (220 ILCS 5/9-252.1)

Section 9.252.1 of the Act states in relevant part:

"Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing."

(220 ILCS 5/9 – 252.1).

In the present case, Complainant tries to assert claims that relate to service provided by ComEd nearly four years before the complaint (claims relating to bills back to October 1998). (Complainant's Ex. 1, Attachment A) Complainant can hardly argue that it lacked knowledge about the alleged incorrect billing. For the period prior to January 2000, Complainant disputes charges because bills were "estimated", are "inconsistent with earlier bills", the "maximum

charge” was not explained. (Complainant’s Ex. 1, Attachment A) All of this information is contained on the face of the bills at issue, therefore, Complainant had knowledge when it received the bills that charges were estimated, were inconsistent with other charges and that the maximum charge is identified. Moreover, Complainant twice entered into agreements through which it tacitly acknowledged that charges prior to January 2000 were appropriate. Complainant is time-barred from now disputing charges relating to electrical service between October 1998 and January 2000. There are numerous Commission orders that support this conclusion. See, for example, Chebanse Grain and Lumber Co., v. Northern Illinois Gas Co., 1997 Ill. PUC LEXIS 821, December 3, 1997 Order, Docket No. 97-00079 (Attachment 1 to this Brief). There, a business complained about a series of gas bills. The Commission concluded that claims for service that was provided more than 2 years before the complaint were barred.

B. Complainant’s Pattern of “Agreeing” to Pay Charges It Now Disputes

Mr. Hughes, himself has twice entered into installment payment agreements on behalf of Complainant covering charges on bills that he now disputes. First, in December 1998 he entered into an installment payment agreement relating to charges Complainant incurred between June and October 1998. At the time, he disputed none of these charges. Those charges were paid four years ago, yet Mr. Hughes now claims that charges on the October 13, 1998, bill are “all disputed” because “they are based on estimated meter readings.” (Complainant’s Ex. 1, Attachment A, p 1)

Mr. Hughes entered into a second installment payment agreement on April 24, 2001. This time, he promised, on behalf of Complainant, to pay all of the then outstanding amounts due in exchange for ComEd waiving late fees. (ComEd Ex. 2.0, p 11) Even though late fees were clearly justified under these circumstances, ComEd agreed to waive them in order to get paid. Complainant did not complain that any charges prior to April 24, 2001, were improper. He did

not complain that demand charges were too high or that estimated charges were inaccurate. He did not complain that charges were not justified because bills went to wrong addresses. He did not complain that he had not received all bills relating to usage prior to April 24, 2001. He did not complain that his “informal complaint” from a year earlier was still unresolved. Mr. Hughes agreed that all charges were appropriate, that Complainant owed them and that it would pay them.

Complainant then proceeded to make only one of the 24 agreed-upon installment payments. Mr. Hughes admitted on cross-examination that he did not honor his agreement. (Tr. p 239)

Yet, when Mr. Hughes filed his direct testimony two years after promising to pay, 35 of the 42 bills about which he complains pre-date his payment agreement. (Complainant’s Ex. 1, Attachment A, pp 1 – 2)

C. Complainant’s Pattern of Failing to Pay For Electricity

Back in 1998, when the account for the Common Areas was in the name of Mid-American Management, Complainant stiffed ComEd out of \$9,140. (ComEd Cross Ex. 1; ComEd Ex. 4; Tr. p 155) Complainant successfully avoided paying for usage in the common areas for a three-month period, October 1998 to January 1999. When Complainant contacted ComEd in January 1999 and placed the account in its name, it did not inform ComEd that Complainant alone was responsible for usage between October 1998 and January 1999. ComEd assigned Complainant a new account number with a zero balance. ComEd then futilely attempted to collect from Mid-American the \$9,140 debt owed by Complainant. Ultimately, ComEd never collected this debt. (Tr. p 364)

In the two-year period between December 1999 and January 10, 2002, Complainant accumulated energy charges for usage in the common areas in the amount of \$59,777. (ComEd Ex. 8) In the first sixteen (16) months of this period, Complainant failed to make a single payment. Complainant made three payments in later months in the cumulative amount of \$8,496. (ComEd Ex. 8)

Finally, in the most recent 16 months, **wherein there are no charges in dispute in this case**, Complainant has accumulated energy charges alone in the amount of \$35,033. (ComEd Ex. 7) As of the date of the hearing in this matter, Complainant had made six payments in the cumulative amount of \$24,092. (ComEd Ex. 7) ComEd was underpaid for this period in the amount of \$10,941, exclusive of late charges. (ComEd Ex. 7)

Between January 14, 1999, and June 9, 1999, the account for the Common Areas was in the name of Complainant and the bills were sent to Complainant's Service Address: 1281 N. Nantucket, Aurora, Illinois. During that time frame, Complainant accumulated charges in the amount of \$14,203. No payments were received by ComEd during this five-month period. (ComEd Cross Ex. 3; ComEd Cross Ex. 7)

On November 19, 1999, ComEd, due to a clerical error, changed the name on the account for the Common Areas to Aspen Square Management. (ComEd Ex. 2.0 pp 3 – 4) ComEd had sent five bills to Aspen between November 1999 and April 2000. (ComEd Ex. 2.1) On April 24, 2000, Mr. Hughes, on behalf of Complainant, advised ComEd that Complainant had received "no bill since 12/99". (ComEd Ex. 2.1; ComEd Ex. 2.0 p 3)

ComEd contacted Aspen, gave it a credit on its account for the prior payments it had made for this period, and again placed the account in the name of Complainant. Because of the nature of its billing system, ComEd had to assign a new account number to Complainant: acct.

no. 8087754030. ComEd then re-issued bills for the five-month period to Complainant.

(ComEd Ex. 2 at pp.4 – 5) ComEd waived the late fees associated with these bills.

In the eleven months after April 2000, Complainant failed to make a single payment. (ComEd Ex. 8) Complainant paid for none of its usage during this time frame even though none of these charges were even arguably the subject of any “complaint”. Complainant also never paid for the five-month period that was originally billed to Aspen. (ComEd Ex. 2.0 pp 4 – 5; ComEd Ex, 8)

Between May 2001 and December 2001, Complainant made only two payments in the total amount of \$4,611, even though it had accumulated new charges of \$20,004 for usage during that period. (ComEd Ex. 8)

D. Complainant’s Pattern of Asserting Unsubstantiated “Claims”

Over the five years that ComEd has been seeking to collect for usage in the Common Areas, Complainant acknowledges that it is the only entity responsible for electricity usage in the common areas. (Tr. p 155) Yet, Complainant has come up with a variety of reasons as to why it should not be responsible for paying for that usage. Those reasons include: bills went to the wrong address; bills went to the Complainant’s management office address rather than Complainant’s post office box; bills went to the Common Areas’ service address rather than Complainant’s post office box; the account was in the name of the wrong entity; certain charges are “estimated;” “estimated” charges are too high; certain actual demand charges are “too high;” certain demand charges are “inconsistent” with prior charges; ComEd did not explain the “maximum charge”; demand charges are “25% to high”; “discrepancies” as to the type of read performed; Complainant was not billed within a two year period; bills were “sent to a vacant apartment and not found until the unit was later rented”. (Complainant’s Ex. 1, Attachment A)

The timing, vagueness and ever-changing nature of Complainant's "claims" over the years shows that its primary problem with ComEd is that it must pay for electricity.

Complainant has simply engaged in a continuous pattern of conjuring up "claims" or entering into "agreements" to thwart ComEd's legitimate efforts to collect what it is rightly owed.

The following is a summary of the "claims" that Complainant has made in the last three years:

- April '00** Informal Complaint - Complainant had received no bill since December 1999; Complainant had received a "large bill" for \$13,000, and the account is not in the name of "Huntington Park Apartments". (ComEd Ex. 2.1)
- [No specific bill is identified. The only account number identified is the commercial account number assigned to Aspen Square Mgt., acct. no. 8087754021.]**
- Jan. '02** Formal Complaint - Contains two relevant sentences: "Starting in 1998 ComEd has failed/refused to properly meter/read/bill our accounts. We have continually contacted ComEd and the ICC about these problems." (Formal Complaint)
- [No bills are attached. No dollar amounts are specified. The only account number identified is the commercial account number assigned to Complainant, no. 8087754030.]**
- April '03** Pre-filed Direct Testimony of Dennis Hughes - Contains vague summary assertions that portions of charges in bills or entire bills between October 10, 1998 and January 10, 2002 are disputed because:
- "the bill was originally sent to the wrong address";
 - "they are based upon estimated meter readings";
 - "they are inconsistent with earlier bills";
 - "estimates are too high";
 - "Huntington Park did not receive a bill for the preceding period";
 - "there are discrepancies as to the type of read performed";
 - bills "were not found until the unit was later rented";
 - "Huntington was not billed within 2yr. Period;" (Complaint Ex. 1)
- [No bills are attached to the testimony. The amount of charges complained of is not mentioned. No account number is identified. The**

only meters identified in the testimony relate to Complainant's commercial account number 8087754030.]

**Hearing,
Day One**

Written Rebuttal Testimony of Dennis Hughes - attaching bills for billing period February 10, 2000 through July 11, 2000 and then vaguely stating without any specific reference to a charge, that the bills contain "differences" and "inconsistent" demand charges and an "unexplained maximum charge". (Complainant's Ex. 3)

The lack of clarity and specificity in these "claims" suggest that Complainant cannot find any legitimate basis upon which to dispute a specific charge. During this three-year period, Mr. Hughes admits that it has performed no analysis or study to determine whether it has been overcharged. Nor has Complainant bothered to hire someone qualified to perform such analysis. (Tr. pp 238 – 239)

E. Complainant's Residential Account Claims

On the first day of the hearing in this case, Mr. Hughes testified about five residential accounts that had been established in Complainant's name between 1999 and 2001. Judge Zaban asked Mr. Hughes about the origin of these account and Mr. Hughes testified that he did not know how any of the accounts originated. (Tr. pp 232 - 233)

On the first day of his cross-examination, Mr. Hughes was asked the following questions and gave the following answers:

- Q. Mr. Hughes, you've been in real estate consulting business for how many years?
- A. Eighteen.
- Q. And during that time how much of your consulting related to residential apartment buildings?
- A. Most of it.
- Q. And right now, how many residential apartments are you responsible for managing?
- A. Probably 800.
- Q. And is it fair to say that over your 18-year career, managing real estate, residential real estate, apartments, you've been managing roughly that number per year for that whole time?
- A. I would say less.

- Q. How much less?
- A. 25 percent.
- Q. Okay. So somewhere between 5 and 800 during that 18-year period?
- A. 4 or 500, yes.
- Q. And all of those apartments are in ComEd's service territory?
- A. Yes, they are.
- Q. And sometimes tenants move out without paying their electric bill, right, you are aware of that situation happening?
- A. Yes.
- Q. It's – actually it's fairly common, isn't it?
- A. Yes.
- Q. Is isn't it common for someone in the real estate consulting business to set up a separate account with ComEd so that when a tenant moves out without paying their electric bill that service can be transferred to another account so that the power doesn't get shut off so that you can show the apartment?
- A. No.
- Q. That's not common?
- A. No.
- Q. And in your 18 years of experience managing up to 800 apartments per year, you have never recommended that?
- A. No.
- Q. And you are not aware of any of your clients engaging in that practice?
- A. No.

(Tr. pp 246 – 48)

On the second day of cross-examination, after being confronted with evidence that Complainant currently has 15 active residential accounts that were opened to keep the lights on in vacant apartments, Mr. Hughes testified in response to questions from Judge Zaban:

- Q. Mr. Hughes, subject to check, would you agree that every other one of the contacts in [ComEd] Exhibit 5 contain the phone number of Huntington Park Apartments?
- A. Yes.
- Q. Okay. Now, do you know – you've talked about different methods by which you use for Huntington Park to get electricity for its potential tenants, correct? You've tried different methods; is that correct?
- A. Yes.
- Q. And is it the current practice of Huntington Park to call up and obtain electrical service for its tenants then have it switched to its tenant's name?
- A. No.
- Q. Okay. In these particular instances, when Peggy contacts Commonwealth Edison, what's the purpose?

- A. To put a vacant apartment into our name and have service turned on.
Q. Okay. So that the apartment retains service even if the apartment is vacant; is that correct?
A. Correct.
Q. Okay. And that's generally after a tenant moves or leaves for whatever reason?
A. Not as a general rule, no.
Q. Okay. What reason would you have for having electricity turned on in a vacant apartment?
A. To have it prepped and have the work done and have it ready for a potential tenant to move in.
Q. Okay. And how long has that been Huntington Park's practice to do that?
A. Probably the last year and a half.
Q. Prior to that what did Huntington Park do?
A. When the tenant moved in, we notified Commonwealth Edison –
Q. No, I'm taking about – you told me that you would contact to put it in your name when you wanted the electricity turned on so you could do work in the apartment, correct?
A. At that time, electric service was on in almost every vacant apartment. There are only – at the time there was maybe 15 vacant apartments.
Q. Okay. And so the electricity was on even after the tenants had moved, is that correct?
A. Correct.
Q. Okay. And do you know who was responsible for the electricity during that period of time?
A. We were.
Q. So that if an apartment was vacant, you would – in the vacant apartment, the electricity would be in your name, correct?
A. Correct.
Q. Okay. And this goes back to 1998; is that correct?
A. Correct.

(Tr. pp 520 - 22; ComEd Ex. 5A – 5O)

Mr. Hughes speculates that \$1,968 in “transfer service” charges were improper because the origin of such charges is not clear from the face of the bills. Some of these bills are four years old.

Mr. Pacholski testified that Complainant currently has 15 individual residential accounts in Complainant's name. (Tr. pp 437 – 438; ComEd Ex. 5A – 5O) One of those accounts, 8087160338 was established by Nelly Nevarez, an employee of Complainant, on November 8,

2002. (Tr. pp 512 – 513; ComEd Ex. 5J) In the Account Activity Statement attached to that exhibit, there are 26 “transfer debit” references and corresponding charges ranging from \$.13 to \$23. (ComEd Ex. 5J p 4) Mr. Pacholski testified that these are charges transferred from other accounts in the name of Complainant (Tr. p 433 – 434).

ComEd’s billing system does not allow it to transfer charges incurred by one customer into the account of another customer. Id. For example, this is why the past due balance in the Mid-American account (\$9,140) was not transferred to Huntington Park when service for the Common Areas was placed into a new Huntington Park account back in January 1999.

It is safe to assume that the same practice took place regarding the \$1,968 in “transfer service” charges that appear in Complainant’s five residential bills that are included in Complainant’s Exhibit 2.

F. Complainant’s “Evidence” Consists Solely of Mr. Hughes’ Unsupported Speculation

Mr. Hughes was asked how he determined that certain demand charges were “inconsistent” with other demand charges. He stated: “Because they were substantially higher based on previous readings”. (Tr. p 236) Mr. Hughes admitted that Complainant never even bothered to hire someone qualified to evaluate electrical usage and charges to ascertain whether his speculation about high or inconsistent charges was correct. (Tr. pp 238 – 239) The only analysis performed by Complainant was an “energy survey” of some sort conducted between September and November 1998. (Tr. pp 237 - 238; Tr. p 250) That four-year old “survey” was never reduced to writing and was never disclosed to ComEd in this case or otherwise. Id. Mr. Hughes, through his testimony, did not seek to compare the results of his “survey” with a single bill issued by ComEd. This survey is meaningless in the context of this case.

To the extent that Complainant, a sophisticated business customer, presumably with income from at least 200 apartments, truly believed that it was over-billed, one would think that it would hire a qualified professional to evaluate its electrical usage and billing.

What we are left with in this case is Mr. Hughes' unqualified lay opinion that because certain charges appear to him to be "too high," then it is so.³ . Complainant also does not feel it necessary to quantify the amount by which it was allegedly overcharged. There is simply no evidence in the record as to any amount of overcharging.

To accept Complainant's (wholly unsupported) conclusions would also require one to reach conclusions concerning ComEd's equipment and Complainant's own conduct that defy logic and common sense. Close analysis of Complainant's claims also reveals numerous internal inconsistencies.

The one page chart prepared by Mr. Pacholski (ComEd Ex. 8) best illustrates these points. Due to ComEd's systematic meter exchanges over the period at issue, 14 meters have been utilized by ComEd at the 11 common area meter locations. Id. The meters each measured two types of electrical usage for which ComEd charged Complainant, kilowatt hour usage (analogous to the mileage of a car) and kilowatt demand (analogous to the speed of a car). (Tr. p 348 – 349)

To accept Complainant's theory one would have to believe that: all 14 meters always measured kilowatt hour usage accurately, but 13 of them failed to accurately measure kilowatt demand; each of 13 meters incorrectly measured demand in one month, self-corrected in a subsequent month and measured accurately and then malfunctioned again in a later month; and

³ Mr. Hughes acknowledged that he has had no training in the operation of electrical meters, does not know how a meter records electrical usage and does not know how a demand charge is calculated. Tr.132. Mr. Hughes is not an electrician. Tr.132.

many meters cycled between operating properly and improperly numerous times during the period; and not one of the meters malfunctioned and remained in that state for the remainder of the period. There is no evidence that Complainant ever requested that any one of the 14 meters be replaced. This, despite the allegation that ComEd had been over-charging Complainant over a five-year period.

Finally, there are numerous examples of Complainant's inconsistent claims as to a given meter. For example, as to the meter identified in the second row of ComEd Exhibit 8, Complainant disputed an estimated demand charge in November 2001 of 4 kW, but did not dispute an actual charge of 10.5 kW in the exact same month of the prior year. (ComEd Ex. 8) As to the meter identified in the 12th row of the same Exhibit, Complainant disputes an actual demand charge of 11.1 kW in August of 2000, but does not dispute an actual demand charge of 15.7 kW in the same month of the following year. (ComEd Ex. 8)

On this record, there is simply no evidence upon which to conclude that Complainant was over-charged for electrical usage. To the contrary, ComEd affirmatively proved that it properly metered and billed for the electricity consumed by the Complainant. Complainant has not come close to meeting its burden of proof in this case, therefore, its claims should be denied and the Commission should order it to immediately pay for all past due electrical service and late charges which are appropriate on this record.

CONCLUSION

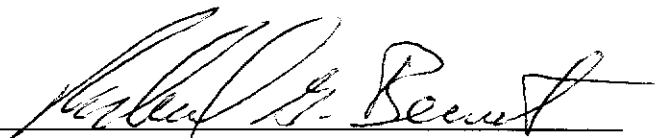
WHEREFORE, for all the foregoing reasons, Commonwealth Edison Company respectfully requests that the Illinois Commerce Commission enter an order: denying Huntington Park Apartment's Formal Complaint; concluding that Huntington Park Apartments is

responsible for \$9,140 in electrical usage charges and late fees incurred at its location between October 10, 1998, and January 13, 1999; and granting such other relief that it deems appropriate.

Dated: July 11, 2003

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

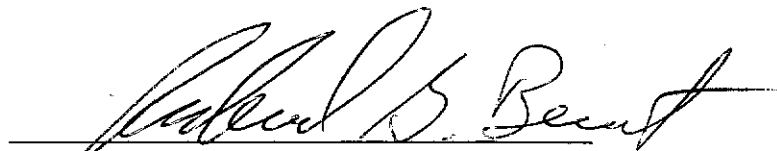
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Docket No. 02-0001

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of Commonwealth Edison Company's Initial Brief in Docket No. 02-0001 upon all parties of record via e-mail, facsimile and U.S. Postal Service on this the 11th day of July, 2003.



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